

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**ELLEN SMOAK**

*Plaintiff,*

**v.**

**BIOHEALTH RX, LLC, EDWARD COKE  
MANN III, and EDWARD COKE MANN  
IV**

*Defendants.*

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**CIVIL ACTION NO. 3:25-cv-919**

**JURY DEMANDED**

**DEFENDANTS' MOTION TO DISMISS  
PURSUANT TO RULES 12(B)(1), (2), (3), and/or (5) FED. R. CIV. P.**

This civil action was initiated by Plaintiff Ellen Smoak (“Plaintiff”) on March 5, 2025. *See* (Doc. 6-2 (the “Petition”).) Defendants BioHealth RX, LLC (“BioHealth”), Edward Coke Mann III (“Bud Mann”), and Edward Coke Mann IV (“Coke Mann”) (collectively, “Defendants”) removed the lawsuit to this Honorable Court on April 14, 2025. (Doc. 1). Although Defendants vehemently deny the material allegations made in the Petition, and intend to fully defend themselves against the baseless claims asserted by Plaintiff, at this time, Defendants request dismissal of all claims because each and every count in the Petition fails pursuant to Rules 12(b)(1), (2), (3), and/or (5), Fed. R. Civ. P. In addition, for the reasons set forth in Defendants’ separately filed Alternative Motion to Dismiss pursuant to Rule 12(b)(6), Fed. R. Civ. P., Plaintiff’s claim for sexual harassment (Count IV) must also be dismissed as a matter of law. Dismissal of the Petition is the only appropriate remedy in these circumstances for the reasons more fully set forth below.

**SUMMARY OF GROUNDS FOR DISMISSAL**

This Court lacks personal jurisdiction over Bud Mann. Plaintiff failed to sufficiently serve Bud Mann with the summons and complaint as required by Rule 4, Fed. R. Civ. P., and therefore this Court does not have personal jurisdiction over him and must dismiss him from the action pursuant to Rule 12(b)(5), Fed. R. Civ. P. In addition, even if service of process were sufficient, Bud Mann does not have the necessary minimum contacts with the State of Texas for the Court to exercise personal jurisdiction over him, and the exercise of personal jurisdiction over him would offend traditional notions of fair play and substantial justice. Accordingly, dismissal of Bud Mann from the lawsuit is appropriate under Rules 12(b)(2) and (b)(5).

Moreover, Plaintiff executed BioHealth's Operating Agreement on or about July 29, 2024, which contains a binding arbitration provision. Accordingly, Plaintiff's claims arising out of or related to her alleged 5% "equity stake" in BioHealth, (Counts I, II, and III), as well as those claims relating to Defendants' exclusion of Plaintiff from the business (Count IV, in part, and Count V), and those claims arising out of Defendants' alleged mismanagement of BioHealth's operations and finances, (Counts VI, VII, and VIII), are all subject to dismissal pursuant to Rules 12(b)(1) or 12(b)(3), Fed. R. Civ. P. and as required by the Federal Arbitration Act.

Accordingly, for the reasons more fully set forth in the attached supporting memorandum of law, Defendants respectfully request the Court dismiss all claims in the Petition as alleged against Bud Mann, based on lack of personal jurisdiction, and all claims, except for Count IV (sexual harassment) as to Coke Mann based on the existence of a binding and enforceable arbitration provision in BioHealth's Operating Agreement.

In addition, and in the alternative, should this Court find that it has personal jurisdiction over Bud Mann, all claims against Bud Mann should also be dismissed based on the existence of a binding and enforceable arbitration provision in BioHealth's Operating Agreement.

Count IV (for sexual harassment) against Coke Mann should be dismissed pursuant to Rule 12(b)(6), Fed. R. Civ. P. for the reasons set forth in Defendants' separately filed motion to dismiss.

Respectfully submitted,

**ADAMS AND REESE LLP**

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**ATTORNEY FOR DEFENDANTS BIOHEALTH RX,  
LLC, EDWARD COKE MANN III AND COKE MANN  
IV**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure, on this 28<sup>th</sup> day of April, 2025.

/s/ S. Craig Wilcox  
S. CRAIG WILCOX